IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 22.01.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice N.PAUL VASANTHAKUMAR

Writ Appeal No.1261 of 2002
& WAMP No.2318 of 2002

K.Elanjiam ... Appellant/Petitioner.

Vs.

1.The Government of Tamil Nadu,
rep. by its Secretary to Government,
(Revenue Department),
Fort St. George, Madras-9.

2.The District Collector,
Tiruchirapalli District.

3.The Tahsildar,
Tiruchirapalli. ... Respondents/Respondents.

Writ appeal filed under Clause 15 of the Letters Patent against the order dated 19.04.2002 made in W.P.No.13347 of 2002 presented to this court under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd Respondent relating to proceedings in Na.Ka.NO.11396-A4-96 dated 8.4.2002 directing the respondents to renew the lease of the land of an extent of 0.0202 Sq. M in S.No.7, Ward - F, Block 26, Tiruchirappalli in favour of the petitioner.

For Appellant : Mrs.A.L.Ganthimathi

For respondents : Mr.K.Balakrishnan,
Additional Government Pleader

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JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above writ appeal is directed against the order dated 19.04.2002 made in W.P.No.13347 of 2002, in and by which, the learned single Judge, after finding no merit in the writ petition, has dismissed the same.

2. Heard Mrs.AL. Ganthimathi, learned counsel for the appellant as well as Mr.K.Balakrishnan, learned Additional Government Pleader for the respondents.

3. It is seen that initially the husband of the petitioner/appellant started a Gymnasium Center at Melaran Road, Trichy in the year 1941 for the benefit of public and after 12 years, the same was shifted to a private place at Town Station. Since 1960 the Center was functioning at the said place. The second respondent, on the representation of the husband of the petitioner, referred the matter to the Special Officer, Trichy Municipality, on 22.11.1983 to assign the land at free of cost and the Municipal Council also recommended to the Government to transfer the said property of an extent of 0.0202 sq.m. Based on the representation of the husband of the petitioner and the recommendation of the Municipal Council, the first respondent-Government by G.O.Ms.No.1534 (Revenue Department) dated 11.7.1985 decided to grant lease for a period of 10 years at the rate of Rs.600/- per year. Based on the same, by a deed of grant dated 17.1.1986, the Governor of Tamil Nadu leased out the land of an extent of 0.0202 sq.m., in Ward F, Block No.26, T.S.No.7 Trichy Town for temporary occupation for a period of 10 years commencing from 07.11.1985 subject to the terms and conditions. While so, on 20.04.1987, her husband died and since then, the petitioner and her elder son Periannan have been running the Center and according to her, the son had obtained several prizes and has been rendering good physical education to the youth. Thereafter she made several representations for extension of the lease period in her name. Whileso, the second respondent by proceedings dated 23.04.1999 issued a show cause notice alleging that the period of lease was over by 06.11.1995 and the petitioner had constructed two shops in the land and leased them at the rate of Rs.600/- per month without permission and the same was in violation of the Government Rules and asked to show cause as to why the lease should not be cancelled. On receipt of the show cause notice, the petitioner has submitted her reply on 27.10.1999 denying the allegations made in the show cause notice.

4. It is further stated in the reply to the show cause notice that the rents from the two shops are being used only for maintaining the Center and for purchase of materials for the Center. It is stated that apart from the two shops, the remaining space was being used for Gymnasium and even according to the Tahsildar, who inspected and submitted a report, the Gymnasium has been running continuously. With

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those details, she prayed for extension of the lease in her favour. In the same application/representation, she also prayed that she is willing to pay higher rent being fixed by the Government. It is the grievance of the petitioner that in spite of her detailed representation, the second respondent ordered to resume the entire land leased out to her husband. The said order is under challenge in the writ petition.

5. The learned single Judge, after finding that the construction of two shops would amount to violation of the terms of lease, has refused to accept the case of the petitioner and dismissed her writ petition.

6. We have verified the initial order granting lease in favour of the husband of the petitioner and also the explanation offered by the petitioner seeking extension of lease in her name.

7. We have already referred to the fact that it is her specific claim that in order to maintain the Gymnasium Center, she constructed two small shops and according to her, the entire income is being used for the maintenance. She also asserted that as on date, herself and her son are looking after the Gymnasium Center. She also agreed to abide by any condition, including payment of higher rent in the event of extension of lease in her favour.

8. Apart from these informations, it is also relevant to note that while entertaining the above appeal, in WAMP No.2318 of 2002, the Division Bench of this Court has permitted the petitioner /appellant to use the property in question, however, she was restrained from putting up any further construction.

9. According to the learned counsel for the appellant, as per the said order of the Division Bench, she is using the property in question. Taking note of the information furnished in her writ petition, we are of the view that ends of justice would be met by permitting the petitioner/appellant to make a fresh application/representation to the first respondent mentioning all the details within a period of three weeks from the date of receipt of a copy of this order. If any such application/representation is made within the time mentioned above, the first respondent is directed to consider and pass appropriate orders in accordance with law within a period of 12 weeks from the date of receipt of a copy of such application. It is made clear that if the Government decides to accept her request, they are free to fix reasonable rent and impose appropriate conditions. In view of the direction of the Division Bench dated 29.04.2002, the petitioner/appellant is permitted to use the property in question till final decision being taken by the Government as directed above.

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10. With the above direction, the writ appeal is disposed of. No costs. Consequently, WAMP No.2318 of 2002 is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The Secretary to Government,
Government of Tamil Nadu,
(Revenue Department),
Fort St. George, Madras-9.

2.The District Collector,
Tiruchirapalli District.

3.The Tahsildar,
Tiruchirapalli.

+ 1 CC To Mrs.AR.L.Gandhimathi, Advocate SR NO.4165

+ 1 CC to the Government Pleader SR NO 4082

W.A.No.1261 of 2002

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